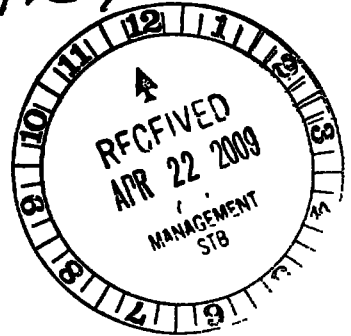


224937

BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, D.C.



Finance Docket No. 35236

JAMES RIFFIN – ACQUISITION AND OPERATION EXEMPTION –
VENEER MFG CO. SPUR – IN BALTIMORE COUNTY, MD

VERIFIED NOTICE OF EXEMPTION

ENTERED
Office of Proceedings
APR 22 2009
Part of
Public Record

RESPONSE TO MTA'S MOTION TO REJECT

1. James Riffin (“**Riffin**”), Applicant in the above entitled proceeding, responds as follows to the Maryland Transit Administration’s (“**MTA**”) April 20, 2009 Motion to Reject James Riffin’s Notice of Exemption (“**Motion**” or “**Motion to Reject**”):

2. 49 CFR 1104.13 states a **party** may file a reply or motion addressed to any pleading. 49 CFR 1101.2 (d) defines a ‘party’ to be “a complainant, defendant, applicant, respondent, protestant, intervener, or petitioner in any proceeding, or other persons permitted or directed by the Board to participate in a proceeding. Persons on the docket service list merely for the purpose of receiving copies of Board releases are not considered parties to the proceeding.” To date, the MTA **has not** filed a notice to participate as a party of record in this proceeding, nor has the Board directed the MTA to participate as a party of record. The Board has placed the MTA on the service list, but that does not make the MTA a party. Since the MTA is not a ‘party’ in this proceeding, any pleadings it makes in this proceeding should be stricken until it receives permission to participate as a party. Consequently, the Board should strike the April 20, 2009

pleadings submitted by the MTA, and should reject any future filings until such time as the MTA files a notice that it intends to participate as a party of record in this proceeding, and as a party of record, subjects itself to the Board's jurisdiction, including the Board's discovery rules.

3. **Failed to correct defects.** (Motion at 2.) The MTA stated "The Riffin Notice fails to correct the defects that caused the Board to reject the Notice of Exemption Mr. Riffin attempted to file in Finance Docket No. 35221." The Board rejected Riffin's FD No. 35221 because it failed to "identify the transferor of the Spur," Op. at 2, and because "Riffin has failed to establish that he is a Class III rail carrier. His only support for this assertion is a reference, without further explanation, to the Board's decision in *CSX Transportation, Inc. – Abandonment Exemption – in Allegheny [sic, should be Allegany] County, MD*, STB Docket No. AB-55 (Sub-No. 659X) (STB served Aug. 18, 2006)." Op. at 2. Riffin's FD No. 35236 NOE corrected these two deficiencies. The transferor of the rail property was identified: Mark Downs, Inc. Riffin's Memorandum and Verified Statement provided "further explanation" "to establish that he is a Class III rail carrier."

4. On page 10 of the MTA's March 26, 2009 Motion to Dismiss, filed in FD 35221, the MTA stated:

"The 'Map for NOE' accordingly deprives the board of the information necessary to ascertain whether the facilities indicated on it actually exist."

5. Exhibit 1-E, which was appended to the May 11, 2007 Supplemental Comments of James Riffin to Response of the Maryland Transit Administration in *Petition of the Maryland Transit Administration for Declaratory Order*, FD No. 34975, was a photograph of the Veneer Spur. This photograph provided graphic evidence that "the facilities indicated on it actually exist." This photograph should be in the MTA's counsel's files. For the Board's convenience (and to refresh the MTA's memory), Riffin is appending hereto a copy of that photograph.

6. Graphic scale: (Motion at 2.) The MTA complains Riffin's NOE Map does not contain "a graphic scale by which the features on the drawing may be calibrated." Motion at 2. The Board, the MTA and Norfolk Southern were provided with a paper (not electronic) copy of Riffin's NOE Map. On the paper copy, the NOE Map is in fact to Scale at 90 feet per inch. This could have been verified by the MTA by measuring the length of the "R/W Frontage = 453' " line, which is $5 \frac{1}{32}$ inches long, then multiplying $5 \frac{1}{32}$ by 90 feet / inch. Had the MTA been a bit more diligent, (or more mathematically proficient), it would have determined that $5 \frac{1}{32}$ inches times 90 feet / inch equates to 452.8 feet. If one were to electronically magnify the drawing by 200%, the length of the line would change to $10 \frac{1}{16}$ inches. At 200% magnification, one inch would equate 45 feet. $10 \frac{1}{16}$ inches at 45 feet / inch equates to 452.8 feet. So while Riffin did not explicitly provide a "Graphic Scale," Riffin's NOE Map **does contain** "a graphic scale by which the features on the drawing may be calibrated." The NOE Map indicates the "R/W Frontage = 453'." However, Riffin will acknowledge that not all individuals who read the Board's Web site are mathematically literate above a third grade level, and so in the future, will provide an explicit "graphic scale" for those readers who are mathematically 'challenged,' or who, like the MTA, are incapable of discerning nonexplicit 'graphic scales.'

7. Requesting the Board to determine facts which Mr. Riffin has the burden to demonstrate: (Motion at 3.) Riffin provided the Board with a Verified Statement which contained all pertinent facts. Riffin did not ask the Board to determine any facts. Based on the facts contained in Riffin's Verified Statement, the Board may determine as a matter of law, that Riffin is in fact a 'common carrier by rail,' and based on that legal determination, verify that Riffin's Notice of Exemption was properly filed pursuant to 49 CFR 1150.43.

8. Requesting relief beyond the scope of the exemption proceeding. (Motion at 6.) At the conclusion of Riffin's Memorandum, Riffin asked that the Board (A) Find that Riffin is a common carrier by rail; (B) Find that the Veneer Spur is a line of railroad; (C) Permit Riffin's NOE to become effective. How the 'relief [is] beyond the scope of this exemption proceeding'

eludes Riffin. The Board must determine as a matter of law whether Riffin is a 'common carrier by rail,' in order to ascertain whether Riffin's NOE should be filed pursuant to 49 CFR 1150.43. The Board must determine as a matter of law whether Riffin's operation of the Veneer Spur would constitute operation of a line of railroad. If Riffin's use of the Veneer Spur would not cause the Spur to be classified as a line of railroad, then Riffin's operation of the Veneer Spur would not require Board approval, and would moot Riffin's NOE.

9. Protective Order. The MTA requests that the Board classify Riffin's Highly Confidential Material as something less than Highly Confidential, so that any and all employees of the MTA (including a bus driver), and any and all employees of any person or entity that elects to participate as a party to this proceeding, have the right to view Riffin's Highly Confidential Material. See ¶6 of the MTA's proposed Protective Order, appended to the MTA's Motion to Reject as the MTA's Appendix A. The MTA provides no 'need to know' reasons or justification for disseminating Riffin's Highly Confidential Material to any and all employees of the MTA or any other party. Unless and until the MTA provides the Board, and Riffin, with legally sufficient reasons why a particular employee of the MTA or some other party needs to view Riffin's Highly Confidential Material, Riffin will persist in insisting that his Highly Confidential Material **not be disseminated** to any Tom, Dick or Mary who has a desire to satisfy their morbid curiosity.

10. Riffin will reiterate his condition for providing the Board with his Highly Confidential Material. **Riffin** will determine who views his Highly Confidential Material. If the Board is unwilling to permit Riffin to be the gate keeper, then Riffin will respectfully withdraw his Highly Confidential Material. Riffin will permit outside counsel for the MTA to view his Highly Confidential Material. Anyone else must demonstrate why they have a 'need to view.'

Respectfully submitted,



James Riffin

CERTIFICATE OF SERVICE

I hereby certify that on this 21st day of April, 2009, a copy of the foregoing Response to MTA's Motion to Reject, was served by first class mail, postage prepaid, upon James R. Paschall, Senior General Attorney, Norfolk Southern Railway Company, Law Department, Three Commercial Place, Norfolk, VA 23510; and upon Charles Spitulnik, Kaplan Kirsch Rockwell, Ste 905, 1001 Connecticut Ave, N.W., Washington, DC 20036, counsel for the Maryland Transit Administration and Maryland Department of Transportation.



James Riffin



**EXHIBIT
1 E**

**Veneer Mfg. Co. siding at NC MP 15.05. CIT looking North.
CIT R/W on right. Tracks removed. Riffin desires to utilize this siding.**